

IN THE MATTER OF LICENSE NO. 358942 MERCHANT MARINER'S DOCUMENT  
AND ALL OTHER SEAMAN'S DOCUMENTS NO. Z-1225044

Issued to: John J. Ryan

DECISION OF THE COMMANDANT

1755

John J. Ryan

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 7 August 1967, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's license and seaman's documents for six months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as a third assistant engineer on board the United States SS ANNISTON VICTORY under authority of the document and license above described, on or about 26 May 1968, Appellant did while standing his routine sea watch between the hours of 0000 and 0400, negligently allow fuel oil to be pumped on deck aft dueto overflowing number five center double bottom tank while transforming fuel oil to it from number one port double bottom tank.

At the hearing, appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of a witness who did not identify himself. (R-5). Shortly before he called this witness, the Investigating Officer stated "I would like to call the Chief Engineer" (R-5). The witness was addressed as "Mr. Rodener" by the Investigating Officer and as "Chief" by counsel for the Appellant. (R-8) The index to the record of proceedings indicates the testimony of Herman L. Rodener, Chief Engineer to be at pp 5-9 of the record and in the record of the hearing held on 15 June 1957 in the matter of the license and Merchant Mariner's documents issued to Timothy A. Chichester, Herman Ludwig Rodener identified himself as the Chief Engineer of the ANNISTON VICTORY. It is clear from the above that the witness introduced by the Investigating Officer was Herman L. Rodener, Chief Engineer on board the ANNISTON VICTORY on 25 and 26 May 1967.

The Investigating Officer with the concurrence of Appellant's counsel introduced into evidence the record of the aforementioned

hearing in the Matter of the license and Merchant Mariner's document issued to Timothy A. Chichester. At that hearing which immediately preceded the one herein considered on appeal, the Examiner found that Mr. Chichester while serving as Third Assistant

Engineer on board the ANNISTON VICTORY under authority of his duly issued license, did on or about 0000 on 26 May 1967 wrongfully disobey a direct order from his superior officer, the Chief Engineer, to tell his relief watch officer, the Appellant, to check the sound tube pipe to number five (5) center double bottom fuel oil tank and also the fuel oil indicator for this tank at the time fuel oil from the port number one (1) double bottom tank was being transferred into the center double bottom number five (5) tank.

In defense, Appellant testified in his own behalf.

The Examiner on 7 August 1967 rendered a written decision in which he concluded that the charge and specification had been proved. The order entered suspended all documents issued to the Appellant for a period of six months on twelve months' probation.

The entire decision was served on the Appellant at New York on 18 August 1967. Appeal was timely filed on 14 September 1967. Although Appellant had until 15 April 1968 to perfect his appeal, no matter in addition to his original notice has been filed.

#### FINDINGS OF FACT

On 25 and 26 May 1967, the Appellant was serving as a Third Assistant Engineer on board SS ANNISTON VICTORY and acting under authority of his license while the ship was at sea. On 25 May 1967 shortly after 2000 the Master of the vessel, Captain Silas Motley indicated to the Chief Engineer, Herman L. Rodener that it was down by the head and was not making much headway and speed. The master asked the Chief Engineer if he could either ballast the tanks or transfer fuel oil to alleviate this condition. The Chief Engineer stated that the preferable action would be to transfer fuel oil and the Master told him to go ahead and do so.

The Chief Engineer proceeded to the engine room to speak to the engineer on watch, Timothy A. Chichester, a Third Assistant Engineer. Mr. Chichester was then 24 years of age and had received his license as an engineer the previous June. The Chief Engineer told Mr. Chichester that fuel oil was to be transferred from the number one double bottom tank, hereinafter referred to as the number one tank, to the number four port deep tank, hereinafter referred to as the number four tank. The Chief Engineer showed Mr. Chichester the valves to be utilized in the transfer and Mr. Chichester opened them at the Chief's direction. The Chief

Engineer remained in the engine room and after a few minutes decided to transfer the fuel oil to the number five center double bottom tank, hereinafter referred to as the number five tank and not to the number four tank. He informed Mr. Chichester of this change of plans and directed him to open the valve to the number five tank and to close the valve to the number four tank which he did. The Chief Engineer showed Mr. Chichester the electric fuel oil indicator for the number five tank and the sounding tube to it which was located in the shaft alley. The Chief instructed Mr. Chichester to check both the indicator and the sounding tube during the transfer and as the transfer would probably not be completed during his watch, to pass these instructions to his relief, the Appellant. The Chief told Mr. Chichester that upon the completion of the transfer the Second Assistant Engineer would come down to the engine room to make sure the valves utilized in the transfer were properly secured.

Since Mr. Chichester had not transferred fuel prior to this occasion, he asked the Chief engineer if there would be any problem. The Chief indicated that as there were 600 barrels of oil in the number one tank and the number five tank was empty and had a capacity of 1000 barrels, number five tank would hold all the fuel oil to be transferred. The Chief Engineer went up to his stateroom and returned to the engine room about one hour later. He went into the shaft alley and checked the sounding tube to the number five tank. Mr. Chichester again asked the Chief if there would be any problem in the transfer and the Chief reassured him that there was no problem.

At approximately 2340 the Appellant went to the engine room to relieve Mr. Chichester as engineering officer of the watch. The Appellant, then two months shy of 22 years of age, had received his engineer's license the previous June upon his graduation from maritime college. He asked Mr. Chichester if everything was operating correctly. Mr. Chichester told him that he had been transferring fuel oil from number one tank into number five tank and showed him the various valves the Chief Engineer had shown him to line up to effect the transfer. The Appellant then checked all the valves, manifolds and tags involved in the transfer and asked Mr. Chichester how much fuel was to be pumped. Mr. Chichester stated that the Chief had told him that the number five tank was empty at the start of the transfer and was bigger than the number one tank so there was no problem in the contents of the number one tank emptying into the number five tank. The Appellant indicated that he was leery of transferring fuel as he had not transferred fuel prior to this occasion and asked Mr. Chichester how much fuel should be pumped. Mr. Chichester told him to pump until he loses vacuum on his transferring pump and again reassured him that there was no problem as the Chief Engineer told him the number five tank

was bigger than the number one tank and the contents of the number one tank could well fit into the number five tank.

Mr. Chichester showed the Appellant how to shut down the pumping operation but did not tell the Appellant either that the Chief wanted him to keep checking the level of the tanks or how to check them. The Appellant however, as he was relieving Mr. Chichester, utilized the electric fuel guage to check the level of fuel in the tanks involved in the transfer to the extent that Mr. Chichester was given to understand that the Appellant knew that he should check the level of the fuel oil in the tanks with the electric fuel indicator.

Mr. Chichester did not tell the Appellant to use either the sounding tubes or the electric indicators to the tanks. Mr. Chichester did tell the Appellant that the Second Assistant Engineer would check the pumping operation after the transfer of fuel oil was completed.

After he relieved Mr. Chichester the Appellant monitored the progress of the transfer of the fuel oil by checking the electric fuel oil indicators on the number one tank and the number five tank. The fuel oil indicator to the number one tank did not appear to the Appellant to be operating properly but there was no apparent problem with the fuel oil indicator to the number five tank. The Appellant did not use a sounding tube to check the tanks.

During the Appellant's watch an oiler ran into the engine room screaming that there was oil on deck. The Appellant immediately shut down the pump and all valves to stop the transfer of fuel oil as Mr. Chichester had shown him to and checked the electric indicator to the number five tank which had a reading that the tank was 92 or 93 percent full. The Appellant called the Third Mate on watch on the bridge and advised him of the spill and sent the wiper on watch to advise the First Engineer of it.

At approximately 0800 on 26 May the Chief Engineer observed a very slight dripping to the deck of fuel oil from both the forward and aft vent pipes of the number five tank. He noted that the vent pipe itself which had been cleaned a few weeks earlier was full of oil drippings.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended "(1) that petitioner was not negligent in failing to watch the sound tube because he was advised that the #5 tank could adequately hold the #1 tank; (2) that he did watch the sight glass which did not indicate that the tank had reached full capacity; (3) he was not advised by the engineer he replaced

that it was necessary that he watch the sound tube; (4) the sound tube was not readily available but was in an obscure place and petitioner did not know it was in the engine room and had a right to assume that it was on deck as many of the sound tubes were; (5) petitioner's decision, based on his experience that the use of the sound tube was unnecessary, was based on the assurances given to him by the engineer he replaced, Mr. Chichester, and the chief engineer that the #5 tank could adequately hold the #1 tank; (6) there was no positive proof that the oil spill caused by an overflow, inasmuch as there were other explanations such as "air burp", that is, trapped air in the tank bringing fuel up through the vent with it; (7) this situation presented a matter of judgment and was not a matter of carelessness or negligence; (8) suspension, which itself was suspended for a period of one year, was excessive in view of all the circumstances involved. An admonition was clearly sufficient."

APPEARANCE: DODD, HIRSCH, BARKER & MEUNIER by Harold J. Lamy  
Attorney for John J. Ryan, Jr.

The second and third stated bases for appeal are not grounds for appeal but are statements of fact; the second consistent with the Examiner's findings and the third stated as one of the examiner's findings. With respect to the first ground of the appeal, I note that the examiner did find that the Appellant was advised that the number five tank could adequately hold the contents of the number one tank but the Examiner was of the opinion that the Appellant as engineer on watch transferring fuel oil from one tank to another should, in the proper performance of his duties, have used the sounding tube to monitor the volume of fuel oil in the number five tank. I too am of the opinion that when fuel is being transferred from one tank to another, the contents of the tank to which the fuel is being transferred should be monitored by use of a sounding tube to that tank and an engineer who fails to take this precaution is negligent.

The fifth ground for appeal is the same as the first except that it states an additional basis for the Appellant's "decision" not to use the sounding tube namely "his experience, that the use of the sound tubes was unnecessary..." The appellant testified that he considered it standard operating procedure in the transfer of fuel oil to watch the fuel oil indicator. (R-15) It is unclear however whether the Appellant meant he considered it standard operating procedure to watch the fuel oil indicator to the exclusion of checking the sounding tube or just as a guide to use in conjunction with checking the sounding tube. The Appellant's testimony that he had been instructed at school that one of the safety precautions for transferring fuel is to check the sounding tube pipe (R-17), that he had never pumped fuel oil before (R-15)

and that at the time he was transferring oil on 26 May 1967 he tried to find the sounding tube to the number five tank but was unable to do so appears to indicate the Appellant considered watching the fuel oil indicator to be a guide to be used in conjunction with checking the sounding tube. This would conflict with the asserted ground number five of the appeal that the Appellant considered the use of the sound tube to be unnecessary. Even if the Appellant as was stated in the fifth ground of appeal, had been of the opinion that the use of the sounding tube was unnecessary. I find such an opinion to have been an unreasonable one.

## II

The fourth asserted ground for appeal does not excuse the Appellant's negligence. A reasonably prudent engineer would have checked the sounding tube to the number five tank as fuel was being transferred to it. If the tube "...was not readily available but was in an obscure place...", then the Appellant should have taken steps to ascertain its location. He could have asked Mr. Chichester where it was located when he relieved him or during the course of his watch the Appellant could have sent an oiler to ask one of the more senior engineers where the sounding tube was located.

I do not agree with the statement in the fourth ground for appeal that the Appellant had a right to assume that the sounding tube to the number five tank was on deck "as many of the sound tube were." I do not believe that the Appellant had a right to assume that the sounding tube to the number five tank was on deck because he knew the sounding tube to the number one tank was on deck. Further, if the sounding tube to the number five tank had in fact been on deck, the Appellant should have made arrangements for it to be sounded even if it would have meant sending his oiler to do it or calling for a relief engineer to stand by for him while the Appellant checked the sounding tube himself.

I do agree with the sixth ground of appeal that there was no positive proof that the oil spill was caused by an overflow. I agree with counsel for the Appellant that the oil spill could have been caused by trapped air in the tank burping fuel oil up through the vent with it. In this regard I specifically reject and exclude from the matters admitted into evidence the testimony of the Chief Engineer (R-6 lines 17-21) which referred to an entry by the Second Assistant Engineer the Chief Engineer had observed in the engine room log book. Since the log book entry itself was not introduced, the Chief's testimony is not admissible under the business entry or official record exception to the hearsay rule. As there was no showing made that the Second Assistant Engineer was not readily

available to appear as a witness, the Chief's testimony as to the Second's statement in the engine room log must be considered inadmissible hearsay. See 46 CFR 137.20-95.

Even though I do not find the oil spill was caused by an overflow I agree with the Examiner that the Appellant was guilty of negligence on 26 May 1967. As the purpose of proceedings under R.S. 4450 is to protect lives and property at sea against actual and potential danger and not to assess blame for casualties, an individual should be found negligent in these proceedings if he fails to take the precautions a reasonably prudent person would take in the same circumstances whether or not his conduct or failure to act was the proximate or a contributing cause of a casualty. Decisions on Appeal 586, 730, 868, 946, 1349. The Appellant failed to take a precaution a reasonably prudent person would take and thus was negligent.

#### IV

I do not agree with the seventh ground of appeal. If the Appellant had exercised his discretion to make a clear choice among alternatives which a competent engineer might reasonably have made in the transfer of fuel from one tank to another and the choice led to the oil spill, he would have been guilty of at most an error of judgment which does not amount to negligence. The evidence however indicates that the Appellant did not make a choice between alternatives which a competent engineer might reasonably have made but failed to take a precaution that was reasonably required under the circumstances, i.e., to monitor by means of a sounding tube the contents of a tank to which fuel oil was being transferred.

#### V

I agree with counsel for the Appellant that awarding a six months' suspension with a twelve month period of probation was excessive in view of all the circumstances involved and an admonition would have been sufficient.

Mr. Chichester who stood the engine room watch preceeding the one on which the Appellant was negligent was found to have wrongfully failed to obey a direct order from the Chief Engineer to tell the Appellant to check the sounding tube pipe to the number five tank while fuel was being transferred to it. Mr. Chichester whose failure to act I consider more culpable than the Appellant's was awarded a suspension of three months with a twelve month period of probation.

It is unfortunate that no charges under R.S. 4450 were brought against the documents and license of the individual I consider most worthy of blame for the shortcomings in connection with the

transfer of fuel oil on board the ANNISTON VICTORY on 25-26 May 1967. The duties of a Third Assistant Engineer do not ordinarily involve the supervision and control of transferring fuel oil at sea. This transfer is generally handled by the Second Assistant Engineer. The Chief Engineer, Mr. Herman L. Rodener explained the means to effect the transfer to Mr. Chichester and directed him to pass that information to the Appellant. Mr. Chichester advised the Chief that he had not transferred fuel before and the Chief should have suspected that the Appellant had a similar lack of experience. Mr. Rodener was highly remiss in failing to see that an engineer experienced in the technique of transferring fuel at sea remained in the engine room during the transfer or at the very least he should have left written orders on procedures for the transfer with the engineering watch officer.

#### CONCLUSION

The Appellant was guilty of the charge of negligence but the finding of the examiner is modified to read that John Joseph Ryan, Jr., while serving as Third Assistant Engineer on board a merchant vessel of the United States, SS ANNISTON VICTORY under authority of his duly issued license, did on or about 26 May 1967, while standing his routine sea watch between the hours of 0000 and 0400 negligently fail to utilize the sounding tube to number five center double bottom tank to monitor the transfer of fuel oil to it from number one port double bottom tank.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 7 August 1967 is MODIFIED to read: that John Joseph Ryan, Jr., holder of license No. 358942 and Merchant Mariner's Documents No.Z-1225044 is hereby ADMONISHED, and as MODIFIED, is AFFIRMED.

P.E. TRIMBLE  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 18th day of March 1969.

## Errors in judgment

- Distinguished from negligence
- Making a choice among alternatives

## Examiners

- Findings modified

## Findings of Fact

- Altered to conform to evidence
- Evidence needed to support
- Held unsupported by evidence
- Review of
- That spill caused by overflow rejected

## Hearings

- Purpose to protect lives and property at sea

## Hearsay evidence

- Consideration of by examiner
- Disregard of
- Inadmissible hearsay
- Official documents
- Official log book entries exception to hearsay rule
- Regular course of business entries
- Testimony as to log entry

## Judgment

- Errors in, see errors in judgment

## Negligence

- As criterion, rather than consequences
- Choice of one of several reasonable alternatives not negligence
- Contributory fault not criterion
- Defined
- Difficult access to sounding tube does not excuse failure to sound
- Distinguished from error in judgment
- Engineer has no right to assume location of sounding tube
- Engineer's duty to ascertain location of sounding tube of tank to which fuel transferred
- Engineer's failure to sound tank to which fuel transferred as

Engineer's opinion that unnecessary to sound tube as unreasonable  
Failure to monitor as  
Failure to take reasonable precautions  
Found upon failure to take precautions a reasonably prudent person would take  
Lack of personnel does not excuse failure to take precaution  
Necessity of proving causal relationships  
Not necessary that conduct or failure to act cause a casualty  
Omission  
Person may be negligent though not primary offender  
Purpose of proceedings  
Reasonable precaution required

#### Order of examiner

Admonition  
Commensurate with offense  
Held inappropriate  
For negligence  
Framing of in view of record  
Suspension on probation reduced to admonition

#### Purpose of hearings

To protect lives and property at sea

#### Revocation or suspension

For negligence  
Held inappropriate  
Reduced to admonition

#### Transfer of fuel

Engineer has no right to assume location of sounding tube  
Engineer's duty to ascertain location of sounding tube to which fuel transferred  
Engineer's failure to sound tank to which fuel transferred as negligence  
Failure to monitor as negligence  
Lack of personnel does not excuse failure to sound